

[NOT YET SCHEDULED FOR ORAL ARGUMENT]

Case No. 22-7117

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MICHELLE FLORIO AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF STEVEN FLORIO, DECEASED;
PATRICK COSTELLO; TIMOTHY MALLACH;
AND WILLIAM MILLIOS
Appellants,

v.

GALLAUDET UNIVERSITY, THE BOARD OF TRUSTEES OF
GALLAUDET UNIVERSITY, ROBERTA CORDANO,
AND WP COMPANY, LLC d/b/a THE WASHINGTON POST
Appellees

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA (1:21-cv-01565)
(THE HONORABLE CHRISTOPHER R. COOPER, J)*

**APPELLANTS' MOTION FOR LEAVE TO FILE
APPELLANTS' OPENING BRIEF OUT OF TIME**

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March 10, 2023

Appellants Michelle Florio as Personal Representative of the Estate of Steven Florio, deceased, Patrick Costello, Timothy Mallach and William Millios respectfully request leave to file Appellants' Corrected Opening Brief out of time on March 10, 2023 for the reasons hereinafter set forth. Counsel for all Appellees have been consulted and have advised that they consent to the Court granting the relief herein requested. It is also requested that to allow for Appellees' Counsel to have at least 30 days from the filing of Appellants' Corrected Brief to file their Briefs, the Briefing schedule be revised to provide that the date for filing of Appellees' Briefs, currently due April 6, be extended until April 10, 2023 and that the time for filing of Appellants' Reply Brief be extended from April 27 to May 1, 2023.

The relief herein sought is requested for the following reasons:

1. Appellants' Opening Brief and the Appendix were due March 3, 2023.
2. In preparation for such filing, Appellants' counsel retained an appellate printing firm to assist with the preparation of the Appendix and Brief.
3. With the assistance of that firm, the Appendix was prepared and shared with Appellees' counsel and finalized after requested corrections were completed.
4. The Appendix was timely filed during the night time hours of March 3, in advance of filing the Appellants' Opening Brief that night.

5. Inasmuch as Appellants' counsel expected to complete the Brief after hours, the printer was requested to provide a Brief Cover for Appellants' Counsel to attach to the Brief for filing. The Brief Cover was provided in Word Perfect format as well as PDF Format.

6. In preparing to file the Brief before midnight on March 3, Appellant's counsel added the Word Perfect version of the Cover provided by the printer to the prepared Brief. Having done so, for some unknown reason, attaching the cover caused the following pages including the Table of Contents and Table of Authorities to lose the margin settings and become distorted. Several attempts were made to correct this without success. Attempt was also made to use the PDF version of the cover, but Appellants' Counsel did not have the technology needed to add a page to the existing PDF Brief file.

7. After numerous efforts to resolve the problems without success, due to the impending midnight deadline, Appellants' Counsel proceeded to file the Brief without the cover and tables, anticipating a corrected Brief could be filed with the assistance of the printer the following business day, March 6.

8. While that partial Brief did get filed that night, it was not until 9 minutes after midnight that the filing was completed rendering the Brief one day late.

9. While not wishing to burden the Court with excuses, Appellants' counsel

must inform the Court that the attempted filing of the Brief so close to the deadline is necessarily attributed to Appellants' Counsel's ongoing eyesight difficulties which limit the amount of continuous time that can be spent on the computer for both research and Brief writing.

10. On Monday, March 6, Appellants' Counsel received an email from the Clerk advising that since the Brief was one day late, a motion to file the Opening Brief out of time was required and this motion is being made at this time for that reason.

11. The Clerk further advised that because there was no Brief Cover, and no tables attached to the filed brief and because the Brief exceeded the word limit, a Corrected Brief would have to be filed.

12. A Corrected Brief was prepared starting on March 6 and shared with Appellees' counsel and certain revisions were requested. Those changes were completed on March 9 and the Brief has been provided to the printer for a technical review so that any needed corrections may be made before it is filed.

13. It is anticipated that the Corrected Brief will be filed simultaneously with this motion or shortly thereafter on March 10.

14. Appellants' counsel therefore humbly requests leave to file Appellants' Brief out of time.

15. Appellants and their counsel do not seek this leave out of bad faith or for the purposes of delaying this appeal.

16. Appellants' counsel notes the relatively small nature of the delay, and does not believe judicial proceedings will be negatively impacted.

WHEREFORE it is respectfully requested Appellants be granted leave to file their Corrected Opening Brief out of time on March 10, 2023. It is further requested that the Briefing Schedule be revised as follows:

1. Appellees' Briefs to be filed April 10, 2023
2. Appellants' Reply Brief be filed May 1, 2023.

Respectfully submitted,
/s/ Ralph G. Reiser

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CERTIFICATE OF COMPLIANCE

I hereby certify that, consistent with the Federal Rules of Appellate Procedure, this document contains 769 words. It has been prepared in a proportionally spaced typeface using Corel Word Perfect in 14-point Times New Roman.

Dated: March 10, 2023

/s/ Ralph G. Reiser

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CERTIFICATE OF SERVICE

I CERTIFY THAT ON March 10, 2023 a copy of the foregoing was filed with the Clerk through the Court's electronic filing system, which is designed to serve all counsel of record.

Dated: March 10, 2023

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